IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.528 OF 2003

IN

COMPANY PETITION NO.925 OF 2003

M/s.Dharamsi Morarji Chemical Co. Ltd. .. Petitioners.

Versus

M/s.Golden Chemicals Pvt. Ltd. .. Respondents.

Mr.Shreeji i/b.Shreeji & Lal for petitioners.
Mr.Rqfiq Peermohidin i/b.Federal Rashmikant for respondents.

CORAM : Dr.D.Y.CHANDRACHUD, J.

17TH APRIL, 2007.

P.C.:

1. With the consent of the Counsel appearing on behalf of the petitioner and the respondent, the Company Petition is taken on board and is called out for hearing. On behalf of the respondent, Counsel has placed on the record, a copy of the order dated 21st December, 2005 passed by the B.I.F.R. under the Sick Industrial

Companies (Special Provisions) Act, 1985. By the order, the respondent has been declared as a sick industrial company u/s.3(1)(o) and there is a direction that the rehabilitation scheme prepared u/s.17(2) be taken on record and be processed further in accordance with the Act.

2. The maintainability of the Company Petition has been questioned on the ground that on the date on which the Company Petition was instituted, in October, 2003, proceedings before the B.I.F.R. had already been instituted on 21st September, 2002. Consequently, in view of the provisions of Sec.22 no proceedings for winding up could lie. In view of the judgement of this Court, in **Century Textiles & Industries Ltd. v/s. Avinash Goel & Anr. (Summons for Judgement No.1078 of 1998 in Summary Suit No.3162 of 1998, decided on 5th February, 2001)** and the judgement in **M/s.Nankarni Bcaings Pvt. Ltd. v/s. Golden Chemicals Pvt.Ltd. (Company Petition No.604 of 2005, decided on 20th January, 2006)** it has not been disputed that the Company Petition could not have been instituted without the permission of the B.I.F.R.

3. In these circumstances, the Company Petition is disposed of in view of the objection with reference to

Sec.22 with liberty reserved to the petitioner to adopt fresh proceedings with the permission of the B.I.F.R.